HIGH COURT OF UTTARANCHAL AT NAINITAL

(Court's order whether the case is or not approved for reporting.)

(Chapter VIII Rule 32 (2) (b)

Description of the case.

WPMS No. 4178/01

Vijay Kumar

Vs.

State of U.P.

Approved for reporting.

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~~Not approved for reporting.~~

Date of decision 11.7. 2006.

Initial of Judge

HIGH COURT OF UTTARANCHAL AT NAINITAL

Writ Petition No. 4178 of 2001 (ms)
(Old No. 1851/82)

1. Vijai Kumar s/o Sri Kishore Shastri r/o Pretnagar, Pargana Rudrapur, Tehsil Kichha, District Nainital
2. Smt. Krishna Devi w/o Sri Ram Kishore Shastri r/o Pretnagar, Pergana Rudrapur, Tehsil Kichha, District Nainital ..... Petitioners

Versus

1. State of U.P.
2. The District Judge, Nainital
3. The Prescribed Authority under U.P. Act No. 1 of 1961, Kichha, Rudrapur, District Nainital .....Respondents

Sri Alok Singh, Sr. Advocate assisted by Sri Vishwa D. Bisen, Advocate for the petitioners.
Standing Counsel for the respondents.

Dated: July 11, 2006

Hon'ble Rajesh Tandon, J.

Heard the learned counsel for the parties at length.

By the present writ petition the petitioners have prayed for a writ of certiorari quashing the order dated 18.11.1981 passed by respondent no. 2.

Briefly stated according to the petitioners a notice under section 10(2) of the U.P. Imposition of Ceiling on Land Holdings Act, to Sri Ram Kishore Shastri, the original tenure holder, who filed objection before the Prescribed Authority challenging the proposal of declaring 6.69 Hectare (105.19 Biswa) of agricultural land as surplus holding on various grounds. The Prescribed Authority vide order dated 26.6.1976 rejected the objections whereupon an appeal was filed in which by the order dated 30.4.1977 the relief to the extent of 4 ½

acres of land only was granted by the appellate authority. Thereafter a writ petition was filed in the Allahabad High Court and the court has remanded the case for fresh disposal.

During the pendency of the case Sri Ram Kishore Shastri died on 8.1.1978. Thereafter the petitioner No.1, his son and his widow filed objections challenging the proceedings under the U.P. Imposition of Ceiling on Land Holdings Act asserting that no land could be treated as surplus. The Prescribed Authority vide its judgment and order dated 7.2.1981 allowed the objections holding that no portion of the land could be declared as surplus as the land held by the petitioners fell within the prescribed limits. With this order the notice under section 10(2) of the Imposition of Ceiling on Land Holdings Act was discharged. Against the order dated 7.2.1981, State respondent no.1 filed an appeal, which was heard and disposed of by the respondent no. 2 vide judgment and order dated 18.11.1981 and remanded the case for deciding it afresh.

Feeling aggrieved by the order passed by respondent no. 2, present writ petition has been filed by the petitioners.

The petitioners have submitted that the disputed land is not irrigated and it has been sufficiently proved by the evidence on record. Thus the appellate authority has manifestly erred in assuming that the Prescribed Authority had not decided the question of the land in dispute being unirrigated. The counsel for the petitioners has submitted that under the Act the surplus land vests in the State only when the surplus land of a particular tenure-holder has been finally determined and the Collector has taken possession thereof under section 14(3) of the Act. Such land continues to vest in the tenure-holder till the surplus land is finally determined and the Collector takes possession thereof.

In the present case that stage was never reached as the case was remanded by the appellate authority and thereafter by the High Court for determination of surplus land. Sri Ram Kishore Shastri continued to be the tenure-holder and his entire holding continued to vest in him till his death. On the death the petitioners inherited of late Sri Ram Kishore Shastri. The petitioners were thus tenure-holders of the holding in their own rights. No determination of surplus land could take place under the Act in respect of a deceased tenure-holder. The act does not contemplate such a determination.

Section 5 (3) of the Act is quoted below:

(3) Subject to the provisions of sub-sections (4) (5) (6) and (7) the ceiling area for purposes of sub section (1) shall be-

(a) in the case of a tenure-holder having a family of not more than five members, 7.30 hectares of irrigated land (including land held by other members of his family) plus two additional hectares of irrigated land or such additional land which together with the land held by him aggregates to two hectares for each of his adult sons who are either not themselves tenure-holders or who hold less than two hectares of irrigated land, subject to a maximum of six hectares of such additional land;

(b) in the case of a tenure-holder having family of more than five members 7.30 hectares of irrigated land (including land held by other members of his family), besides, each of the members exceeding five and for each of his adult

sons who are not themselves tenure-holders or who hold less than two hectares of irrigated land, two additional hectares of irrigated land or such additional land which together with the land held by such adult son aggregates to two hectares, subject to a maximum of six hectares of such additional land."

In the impugned order the learned lower appellate court has given much emphasis that for deciding a question of the land being irrigated or unirrigated, no oral evidence can be adduced or taken into consideration. Section 4-A of U.P. Imposition of Ceiling on land Holdings Act, provides for determination of irrigated land. This section reads as under:

4-A. Determination of Irrigated land- *The prescribed authority shall examine the relevant Khasras for the years 1378 Fasli, 1379 Fasli and 1380 Fasli, the latest village map and such other records as it may consider necessary, and may also make local inspection where it considers necessary, and thereupon if the prescribed authority -*

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There is nothing under Section 4-A which prohibits the Prescribed authority to permit oral evidence for determination of the irrigated land. The law very well permits the prescribed authority to determine the question by adducing oral evidence, if he considers necessary. Thus it is the prerogative of the prescribed authority to determine the question of irrigated land by all or any of the method prescribed under the law either by examination of revenue records and maps or consideration of oral or other documentary evidence. Thus the findings of the

lower appellate court cannot be sustained that the prescribed authority was not justified by taking the oral evidence into consideration for deciding the question of land being irrigated or not.

I have gone through the judgment and order dated 7.2.1981 passed by the prescribed authority. The prescribed authority held as under:

उपरोक्त विवेचना के आधार पर खातेदार द्वारा घृत भमि एवं उसकी सीलिंग अधिनियम के अनर्तगत दी जाने वाली भूमि निम्न प्रकार है

ऊ खातेदार द्वारा घृत भूति [illegible] बीधा असिचित अथवा इ-ऊ-ऊ एक्त

ि. खातेदार की सिलींग अधिनियम के अर्न्तगत अधिकतम प्रयोज्य भूमि असिंचित रूप में [illegible] एक0

ि. परिवार के इ अधिक तीन सदस्यों को प्रति सदस्य सिचित
दो हेक्टर अतिरिक्त दी जाने वाली कुल भूमि
श्हेक्टेर सिचित अथवा ह्व हैक्टर असिचित अर्थात कुल [illegible] एकड

कृ अतिरिक्त द्वितीय जिला जज नैनीताल के निर्णय दिनांक [illegible] के अनुसार बाग भूमि की दी गयी छुट
[illegible] एकड सिंचित अथवा असिंचित रूप में [illegible] एकड
योग [illegible] से कृतक का योगक्र [illegible] एकड

अतः स्पष्ट है कि आपत्तिकर्ता की कुल घृत भूमि इ-ऊ-ऊ एकड असिचित है जबकि वह [illegible] एकड असिंचित भूमि रख सकता है। अतएव उसके पास सीलिग अधिनियम के अर्न्तगत कोई भूमि नही बचती।

The order is well reasoned and the prescribed authority has rightly calculated the area of irrigated and unirrigated land under the holdings of the petitioners. I find no illegality or irregularity in the judgment of the prescribed authority. Thus the order passed by the lower appellate court cannot be upheld.

In view of the above, the impugned order dated 18.11.1981 passed by the Civil Judge, Nainital is set aside. The

order dated 7.2.1981 passed by the prescribed authority is hereby confirmed.

Consequently, writ petition is allowed. No order as to costs.

Dated: July 11, 2006 **Rajesh Tandon, J.**

*Dhyani